

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON MORTON,

Plaintiff,

vs.

Case No. 11-cv-12925
HON. GEORGE CARAM STEEH

CITY OF DETROIT,

Defendant.

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ORDER DENYING MOTION FOR DECLARATORY JUDGMENT
WITHOUT PREJUDICE (DOC. # 35) AND ORDERING PLAINTIFF
TO SHOW CAUSE WHY ACTION SHOULD NOT BE DISMISSED

The court conducted an in-chambers conference in this matter on June 11, 2013. There the parties discussed the background of this matter and the issues remaining in the case. The plaintiff's attempts to have the case certified as a class action have been unsuccessful. This is for a number of reasons, including (1) a number of the putative class members were already pursuing litigation in other courts, (2) each plaintiff's ticket arose and was disposed of under unique factual circumstances, and (3) there was no information indicating which ordinance was applied to each putative plaintiff. As the parties discussed, plaintiff alleges that he was issued a ticket by Detroit police officers in June of 2009. It is not disputed that the subject ordinance was amended in 2010. For that reason, the court questions how it could issue any declaratory relief, when the

plaintiff in the instant litigation was not even ticketed under the current ordinance and never sought such relief in his first amended complaint (Doc. # 11).

Even more puzzling to the court is the fact that the parties to this matter have reached a significant settlement in a state court case stemming from the same June 2009 incident, which appears to have been brought by Morton against only the individual officers. This fact was not brought to the attention of the court by the parties but was uncovered in the court's own research, and its impact on this matter has not been addressed by the parties. This brings into serious question the providence of pursuing declaratory relief at this juncture; moreover, the parties were unable to inform the court whether settlement of that case included Morton's general release of all claims stemming from the June 2009 incident, which appears very likely. Of course such a release would appear to require a dismissal of this action based upon principles of release, res judicata, or mootness.

Given the unusual procedural posture of this case, the questionable viability of Morton's claims, and the state of briefing on the issue, the court finds that oral argument will not assist its determination on the issue and orders the motion submitted on the briefs, in accordance with local rules. The court has determined that declaratory relief is not appropriate at this juncture, where plaintiff has reached a settlement with defendant which may or may not include the claims in this case, as well as because the plaintiff suffered no injury under the current ordinance.

For these reasons, plaintiff's motion is hereby **DENIED WITHOUT PREJUDICE**. Plaintiff is hereby **ORDERED TO SHOW CAUSE** why this action is not subject to

dismissal for the reasons outlined above, on or before June 25, 2013. Defendant may file a response brief on or before July 3 if desired.

IT IS SO ORDERED.

Dated: June 12, 2013

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on June 12, 2013, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk